IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7410 to 7413 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JABBAR AHEMAD MEMON

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioners

MR HL JANI, APP, for Respondent No. 1 & 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/12/2000

COMMON ORAL JUDGEMENT

Rule. Mr H.L. Jani, learned APP, waives service of Rule on behalf of the respondents in each of the matters.

2 As common question of law and fact are involved in the above said four matters, all the matters are taken up for hearing together and are being disposed of by this common order.

3 The petitioners of Criminal Misc. Application No.7410 of 2000 are residents of Daman and have been dealing in rotten gur. They are arrested in respect to C.R. No.5108 of 1999 registered at Umargaon Police Station for the offences made punishable under Section 70(1) and 81 of the Bombay Prohibition Act, 1949 ("the Act" for short).

It is alleged against the petitioners of Misc. Criminal Application No.7410 of 2000 that they have abated one Akhtarbhai Razaqbhai Memon and Ganibhai of Sanjan for commission of above stated offences. The allegation contained in the FIR suggests that P.I. Shri B.J.Ninama of Umargaon Police Station on receipt of the intelligence report carried out a raid on the godown of said Akhtarbhai Razaqbhai Memon and Ganibhai and during the raid found out 119 bundles of rotten joggery each bundle containing 50 kg of joggery. After taking the sample the said goods were seized as it was prohibited to possess, transfer or sale within the territorial limits of State of Gujarat. On completion of investigation, the chargesheet is filed in the Court of the learned JMFC, Umargaon, District Valsad.

The petitioners have contended that even according to the papers of charge sheet there is no allegation or material from which a reasonable inference could be drawn that the present petitioners have brought the joggery seized by the police officer or whether they were found in possession of the same. The only allegation against them according to the FIR is that they abated accued Akhtarbhai Razaqbhai Memon and Ganibhai in the commission of the said crime. On the said ground the petitioners have prayed to quash the FIR in the petition of Misc. Criminal Application No.7410 of 2000.

4 The petitioner of Criminal Misc. Application No.7411 of 2000 was granted leave to correct his name so as to read as Nasir Harun Memon @ Nasarmiya Sanjanwala. That an FIR vide C.R. No.5211 of 1999 is registered at Umargaon Police Station against one Jagdish Tehraj Bhanusala, Arjun Peraj Bhanusala and the petitioner for the offence punishable u/s 70(a) and 66(1) of the Act.

The allegation contained in the FIR suggests that

ASI Shri Solanki on receipt of the intelligence report carried out a raid on one Ashapura Kirana Stores and during the search found 60 bundles of rotten joggery each bundle containing 50 kg of joggery. They also found two bundles of Mahuda flowers each containing 75 kg of Mahuda flowers. After taking the sample the said goods were seized as it was prohibited to possess, transfer or sale within the territorial limits of State of Gujarat. On completion of investigation, the chargesheet is filed in the Court of the learned JMFC, Umargaon, District Valsad.

The petitioner has contended that the petitioner is not resident of Sanjan and has been dealing at Sylvassa which is situated within the Union Territory and not within the territorial limits of State of Gujarat. That the FIR does not disclose any allegation or material from which reasonable inference could be drawn to implicate the present petitioner in respect of the offence alleged against him. On the said ground the petitioner has prayed to quash the FIR in the petition of Misc. Criminal Application No.7411 of 2000.

5. The petitioner of Criminal Misc. Application No.7412 of 2000 was granted leave to correct his name and add so as to read as Nasir Haroon Memon @ Nasarmiya Sanjanwala. That an FIR vide C.R. No.5212 of 1999 is registered at Umargaon Police Station against one Rambadan Rama Chauhan, Ramadhav Rama Chauhan and the petitioner for the offence punishable u/s 70(a) and 66(1)(b) of the Act.

The allegation contained in the FIR suggests that ASI Shri Solanki along with his staff members on receipt of the intelligence report carried out a raid on one Ashapura Kirana Stores and during the search found 60 bundles of rotten joggery each bundle containing 50 kg of joggery. They also found two bundles of Mahuda flowers each containing 75 kg of Mahuda flowers. After taking the sample the said goods were seized as it was prohibited to possess, transfer or sale within the territorial limits of State of Gujarat. On completion of investigation, the chargesheet is filed in the Court of the learned JMFC, Umargaon, District Valsad.

The petitioner has contended that the petitioner is not resident of Sanjan and has been dealing at Sylvassa which is situated within the Union Territory and not within the territorial limits of State of Gujarat. That the FIR does not disclose any allegation or material from which reasonable inference could be drawn to implicate the present petitioner in respect of the

offence alleged against him. On the said ground the petitioner has prayed to quash the FIR in the petition of Misc. Criminal Application No.7411 of 2000.

6. The petitioner of Criminal Misc. Application No.7413 of 2000 has stated that he is the sole proprietor of Sylvassa Traves, having his address at Naroli, situated within the territorial limits of Union Territory. That an FIR vide C.R. No.5196 of 1999 is registered at Umargaon Police Station against one Premabhai Kilabhai Dhot for the offence punishable u/s 70(a) and 64 of the Act.

The allegation contained in the FIR suggests that Shri Premabhai L Rohit, an unarmed head constable, on receipt of the intelligence report carried out a raid on the house of accused Premabhai Kilabhai Dhot and during the search found 200 bundles of rotten joggery each bundle containing 20 kg of joggery. After taking the sample the said goods were seized as it was prohibited to possess, transfer or sale within the territorial limits of State of Gujarat. On completion of investigation, the chargesheet is filed in the Court of the learned JMFC, Umargaon, District Valsad.

The petitioner has contended that the FIR does not disclose any allegation or material from which reasonable inference could be drawn to implicate the present petitioner in respect of the offence alleged against him. On the said ground the petitioner has prayed to quash the FIR in the petition of Misc. Criminal Application No.7412 of 2000.

7 Initially, vide earlier order dated 13.12.2000 urgent show-cause ntoice was issued and the learned APP was directed to keep Investigation Officer of each of the criminal cases registered against the petitioners of the above said matters present with relvant papers.

8 Today the Investigation Officer is present in the Court with the learned APP and has stated at Bar that charge sheet has been filed in all the four cases. However, learned APP, Mr H.L. Jani, on instructions from the Investigation Officer, could not point out any material from the papers appended to the charge sheet filed in the Court which could connect the petitioners with the offences alleged against the petitioner in each of the matters.

9 On the basis of the above stated fact, no prosecution against the petitioners could be permitted to

proceed further int he facts and circumstances of the case, as discussed above, and as such respective FIRs as well as criminal proceedings initiated on the basis of the same in each of the petitions qua petitioner(s) is hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs.

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(mohd)